

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RASHAWN KANTE TAYLOR,)	No. C 11-03633 EJD (PR)
)	
Plaintiff,)	ORDER OF DISMISSAL WITH
)	LEAVE TO AMEND
vs.)	
)	
CALIFORNIA DEPT. OF)	
CORRECTIONS AND)	
REHABILITATION, et al.,)	
)	
Defendants.)	
_____)	

Plaintiff, a prisoner currently incarcerated at the Salinas Valley State Prison ("SVSP") in Soledad, filed the instant civil rights action in pro se pursuant to 42 U.S.C. § 1983 against prison officials. Plaintiff's motion for leave to proceed in forma pauperis, (Docket No. 2), will be granted in a separate order.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a

claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

B. Plaintiff's Claims

According to the complaint, Plaintiff is a "Oakland resident" on parole in Oakland when he was arrested in Modesto. Upon release, he was informed that he was to report on parole to Stanislaus County, which Plaintiff claims is a hardship because he has nowhere to stay and there are no resources to help him. Plaintiff seeks parole to be transferred back to Oakland where he has family support. (Compl. at 3-4.)

Plaintiff's complaint must be dismissed for failure to state a cognizable claim as he has failed to allege the first essential element for a § 1983 claim, *i.e.*, that a right secured by the Constitution or other federal law was violated. In the interest of justice, the Court will dismiss the complaint with leave to amend for Plaintiff to attempt to show that he has a federal right to parole in the county of his choice.

CONCLUSION

For the reasons stated above, the Court orders as follows:

1. The complaint is DISMISSED with leave to amend **within thirty (30) days** from the date this order is filed, to correct the deficiencies discussed above. The amended complaint must include the caption and civil case number used in this order (11-03633 EJD (PR)) and the words FIRST AMENDED COMPLAINT on the first page. Because an amended complaint completely replaces the previous complaints, Plaintiff must include in his amended complaint all the claims he wishes to present and all of the

1 defendants he wishes to sue. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir.
2 1992). Plaintiff may not incorporate material from the prior complaint by reference.

3 **Failure to file an amended complaint in the time provided will result in the**
4 **dismissal without prejudice of this action without further notice to Plaintiff.**

5 2. It is Plaintiff's responsibility to prosecute this case. Plaintiff must
6 keep the Court informed of any change of address by filing a separate paper with the clerk
7 headed "Notice of Change of Address." He must comply with the Court's orders in a
8 timely fashion or ask for an extension of time to do so. Failure to comply may result in
9 the dismissal of this action pursuant to Federal Rule of Civil Procedure 41(b).

10
11 DATED: November 21, 2011


EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

RASHAWN KANTE TAYLOR,
Plaintiff,

Case Number: CV11-03633 EJD

CERTIFICATE OF SERVICE

v.

CALIFORNIA DEPT. OF CORRECTIONS, et
al.,

Defendants.

_____/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 11/23/2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Rashawn Kante Taylor CBDV750
Santa Rita County Jail
5325 Broder Blvd.,
Dublin, CA 94568

Dated: 11/23/2011

Richard W. Wieking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk